

CBA President's Address at the opening of the Grand Court 14 January 2015

My Lords, Honourable Chief Justice, Honourable Justices of the Grand Court and Magistrates of the Summary Court, I rise on behalf of the Caymanian Bar Association (CBA) to second the motion of the Honourable Attorney General to open the Grand Court for the year 2015.

I too wish to extend a warm welcome to all legal and judicial appointments referenced earlier by the Honourable Attorney General in his remarks. On behalf of the CBA, I wish all the appointees much success.

I have read the remarks of Mr McKie QC on behalf of the editors of the Cayman Islands Law Reports with regards to the retirements of Sir Peter Cresswell and Mr. Justice Henderson and the forthcoming retirement of Mr. Justice Foster - and adopt them wholeheartedly. I would add that it is impossible to mark Mr Justice Henderson's retirement without mentioning the extraordinary events of September 2008 that represented an assault on our judiciary. It is a measure of the man that after vindication he did not shrink or hide but returned to his judicial duties and has since rendered fearless and impartial justice in the highest tradition of our judiciary. On behalf of the CBA, I also wish to thank each of them for their service and wish them all the best in future.

Before continuing, I would take a moment to remember the passing of two members of our legal community during 2014: former Madam Justice Levers, and Ms Simone Tompkins.

With your indulgence, I will highlight some of the Association's initiatives and also some of issues faced by the legal profession and in particular Caymanian attorneys.

The CBA in 2014

The CBA celebrated its 26th anniversary last year and its relevance for Caymanian lawyers remains just as strong as it was at the time of its founding. The CBA remains committed to its mandate to serve the legal profession generally and specifically to protect, promote and enhance the interests of Caymanian attorneys. The CBA now represents the interests of more than 200 Caymanian attorneys, an overwhelming majority of all Caymanians in the

profession. We now also have over 100 honorary student members comprised of Caymanian law students and articled clerks. In keeping with its founding purpose, the Student Chapter organised many academic and social events throughout the year.

In 2014 the CBA, the Cayman Islands Law Society and the Chancery Bar Association of England and Wales established the Cayman Trainee Placement Scheme offering 12 week placements with participating Chancery Chambers in England and Wales. Two Caymanian Articled Clerks have now successfully been placed under this scheme. I would like to extend every thanks to the Chancery Bar for their gracious offer.

The CBA is also glad to be associated with the Truman Bodden Law School and annually provides incoming students with a realistic expectation of what the practice of law means. Last November, the CBA sponsored the Law School Moot Society's Moot Court Competition which was a huge success.

Legal Practitioners Bill

Of all the topics I will speak to this morning, the Legal Practitioners Bill consistently garners the most discussion having been recognised in prior speeches before this Honourable Court, within the Legislative Assembly and within the public at large. The CBA has for more than a decade been trying to secure the modernisation of the Legal Practitioners Law, to introduce a balanced framework which: enables local firms to compete successfully on a global basis; provides for the proper regulation and discipline of the profession within and outside of the Cayman Islands; and affords suitable protection for the recruitment, training, development and progression of Caymanians within the profession.

The failure to answer repeated calls from the CBA and the Law Society for the consideration and modernisation of the legal regulatory regime, unfortunately remains an inexplicable mystery.

Sadly, the landscape has remained relatively unchanged despite expressions of intention by successive Governments. Several drafts of the legal practitioners bill having been introduced over the years by various committees and individuals. The many volunteers who have given their time and energy to this task will already be familiar with the issues. For the uninitiated I hope to provide a short summary of those most pressing concerns:

Code of Conduct. Unlike most other sophisticated financial centres, there remains no mandatory code of conduct to regulate attorneys in these Islands. Outside of immediate concerns that may spring to mind, one tangible result is that without a code of conduct Caymanian attorneys are unable to seek admission in England and Wales. Despite wider support for the voluntary code of conduct adopted by the CBA and most members of the Law Society, the voluntary code has yet to be placed on statutory footing.

Foreign Practicing Certificates. Since the requirements of Cayman Islands practicing certificates remains tied to residency, there remains no regulation of attorneys practicing Cayman Islands law outside of these Islands. The CBA acknowledges that foreign offices play an important role in helping to direct work streams into Cayman that would not otherwise be available, to the benefit of all, including the smaller firms, thereby strengthening the ties to these Islands.

However, the lack of regulation of this area also means that it is open to abuse. The CBA remains extremely concerned about attorneys practicing Cayman Islands law outside of these Islands, who may or may not have previously worked in the Cayman Islands. As such, these attorneys are able to operate outside of the effective control of this Honourable Court.

Foreign Law Attorneys. Cayman is increasingly seeing lawyers practicing the laws of foreign jurisdictions setting up offices in these Islands. However, save for the regulations that may be imposed by their home jurisdictions, these lawyers are not subject to further regulation or control here in Cayman.

In-house counsel. There remains no regulation of in-house counsel in the Cayman Islands – which is a growing and important segment of the legal profession. The CBA remains concerned about the lack of regulatory oversight for such positions especially as these individuals are being employed to provide Cayman Islands legal advice to their employers. The potential lack of accessibility for Caymanian attorneys to such position is also of concern.

Articles of Clerkship. I would first like to recognise the past and continuing efforts by those firms offering articulated clerkship positions to enable Caymanians to take that final step to qualification. Unfortunately, firms that provide articles remain in the minority. The CBA remains of the view that the training of new generations of attorneys remains an important matter of legal and professional

obligation, not directly attributable to the size of the firm concerned. Every work permit issued in these Islands carries with it an obligation to train, with law firms being of no exception. Accordingly, for those firms unable to employ articulated clerks could nevertheless make a contribution proportional in other tangible ways by offering training and education within the legal profession.

Regulation of entry of Law Firms. While the number of law firms operating in Cayman appears to be increasing every year, with the introduction over the past few years of international firms setting up branches in the Cayman Islands, the CBA has yet to see an increase in the number of articulated clerkship positions being offered. The CBA remains concerned that, absent benefits of a more diversified legal market, the apparent lack of oversight in the introduction of new players may simply result in the dilution of the legal market in Cayman Islands further, to the detriment of its established firms.

Caymanian Participation. Last but by no means least, the most troubling and polarising issue that the CBA faces is that of inadequate Caymanian participation in the highest positions within our law firms. Despite various efforts to introduce provision in the legal practitioners bill designed to increase Caymanian ownership, management and participation in our law firms, the real and demonstrable inequality remains.

Turning to the New Court facilities

Also of greater importance to all, is the immediate need for modernisation and expansion of our Courts facilities. The CBA is encouraged by Government's recent announcement that it is actively pursuing the construction of new court facilities. It is hoped that tangible progress will actually be made.

Public-private sector cooperation on legislative matters

Finally, I would like to extend every thanks to our members who have spent thousands of hours assisting Government with its legislative agenda by providing input and constructive comments on various pieces of draft legislation. Yet all too often, progress is slow and some of those efforts are inexplicably shelved, only to be resurrected from time to time. Legislation needs to be progressed at a faster pace so as to place Cayman as the offshore jurisdiction which responds quickly to the changing market place by offering innovative products.

Conclusion

Now it only remains for me formally to second the Honourable Attorney General's motion to open the Grand Court for 2015 and, on behalf of the Caymanian Bar Association, I take this opportunity to wish all Judges of the Grand Court, all Summary Court Magistrates, all the Court Staff and fellow members of the legal profession a very happy, healthy and prosperous 2015.

Abraham Thoppil
President, Caymanian Bar Association
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